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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0723

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information about the individual that raised security concerns, and summoned him for an interview with a personnel security specialist in June 2008. After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

authorization. The LSO subsequently informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 12 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced four exhibits, and presented the testimony of four witnesses in addition to testifying himself.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

A. The Notification Letter

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under Criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in the individual's judgement or reliability. 10 C.F.R. § 710.8(h). Criterion (j) relates to derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from alcohol abuse, and that this condition causes, or may cause, a significant defect in the individual's judgement or reliability. The Letter also relies on statements made by the individual during the psychiatric evaluation and/or the PSI indicating that he was arrested 11 times during the years from 2000 to 2008 for offenses related to alcohol possession or use, including arrests in (i) April 2008 for Public Intoxication after consuming three to four beers at a local bar; (ii) September 2006 for Public Intoxication after drinking six beers, pulling his vehicle into a convenience store parking lot, and going to sleep; (iii) December 2004 for Public Intoxication after drinking six to eight beers, pulling his vehicle off of the road, hitting a fence, and then going to sleep; (iv) February 2004 for Driving under the Influence of Alcohol (DUI) after drinking four or five beers at a friend's house; (v) October 2002, September 2001, August 2001, April 2001 and July 2000 for under-aged possession and/or consumption of alcohol; (vi) July 2002 for DUI after he consumed four to six beers at a local bar, and (vii) May 2001 for Providing Alcohol to Minors. The Letter also alleges that in 2000 or 2001, the individual's mother asked him to leave the house for coming home late after drinking, and that despite all of these difficulties through the years, the individual continues to drink.

Under criterion (l), information is derogatory if it indicates that the individual “has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security. Such conduct include[s], but [is] not limited to, criminal behavior” 10 C.F.R. § 710.8(l). As support for this criterion, the Letter cites the 11 alcohol-related arrests mentioned in the preceding paragraph.

B. The DOE’s Security Concerns

The individual generally does not contest the allegations set forth in the Notification Letter.³ This derogatory information adequately justifies the DOE’s invocation of criteria (h), (j) and (l), and raises significant security concerns. Mental conditions that involve the excessive consumption of alcohol, such as alcohol abuse, often lead to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual’s reliability and trustworthiness. Criminal acts also create doubt about a person’s judgement, reliability and trustworthiness. By their very nature, they call into question a person’s ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G, I and J.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by*

³ The only allegation in the Notification Letter that the individual takes issue with is the claim that he continues to consume alcohol. As I shall discuss in section IV. of this Decision, the individual contends that he has abstained from all alcohol consumption since May 2008.

OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through his testimony and that of his mother, his fiancée, the Employee Assistance Program (EAP) co-ordinator at his job site, and his friend, that he is currently exhibiting adequate evidence of rehabilitation from his alcohol usage. The individual testified that he has abstained from alcohol usage since May 2008. Hearing transcript (Tr.) at 68. This testimony is supported by that of his mother (Tr. at 19-20) and his fiancée (Tr. at 42), and by the results of laboratory tests obtained by the DOE psychiatrist in connection with her evaluation of the individual (Tr. at 130-131).

The testimony of the EAP co-ordinator established that the individual has also been totally compliant with the terms of the treatment program recommended by the DOE psychiatrist and by the EAP counselor herself. That program includes participation in an intensive outpatient treatment for 60 hours over a period of five weeks, continuing abstinence, weekly "aftercare" sessions, and monthly counseling sessions. Tr. at 103-105. The EAP co-ordinator opined that, as long as the individual remained compliant with all aspects of the program, "his prognosis could be viewed as good." Tr. at 103. The individual testified that he intended to remain compliant, and to permanently abstain from alcohol use. Tr. at 91, 82.

The individual's mother testified that he is more responsible now than he was as a teenager, when he was experiencing many of his alcohol-related legal problems. He has become a better father to his two children from an earlier marriage, and no longer associates with people that he used to drink with as a teenager. Tr. at 14-16, 35. In essence, she continued, he has "grown up." Tr. at 38. This sentiment was echoed by the individual, who indicated that he had abandoned the irresponsibility of his teen-aged years, and has fully accepted the responsibilities of parenthood imposed by his two children and by the third child that he is expecting, with his fiancée. Tr. at 89.

B. Analysis

After careful consideration of this testimony and of the record in this matter as a whole, I find that the individual has not produced adequate evidence of reformation or rehabilitation from alcohol abuse. I base this finding primarily on the number and timing of the individual's alcohol-related arrests, and on the testimony of the DOE psychiatrist.

As previously mentioned, the individual was arrested 11 times over an eight-year period of time for offenses having to do with the possession or consumption of alcohol, including two DUI arrests, and two arrests for public intoxication under circumstances that strongly suggest that the individual was operating a motor vehicle while intoxicated. The serious consequences and defects in judgement that the individual has suffered due to his excessive drinking attest to severity of the individual's alcohol abuse. They also suggest that a lengthy period of rehabilitation is necessary. I note that seven of the individual's arrests occurred while he was a teenager, a period of life that is often marked by irresponsible behavior. However, the mitigating value of the individual's youth at the time of those arrests is significantly diminished by the fact that his alcohol-related legal problems have continued into adulthood. The individual's last four arrests, in 2004 (two), 2006 and 2008 occurred when the individual was 21, 22, 23 and 25 years old, respectively. Simply put, an insufficient amount of time has passed since the individual last drank to excess and since his last arrest to convince me that a return to these patterns of behavior is unlikely.

This conclusion is in accord with the testimony of the DOE psychiatrist. In her report, she recommended that, in order to show adequate evidence of rehabilitation, the individual complete at least 50 hours of therapy in a professionally-led treatment program, including "aftercare," and completely abstain from alcohol use for two years. DOE Exhibit 7 at 14. At the hearing, she testified that, while the individual had satisfied the treatment component of her recommendation, his 14 months of abstinence were insufficient to adequately demonstrate rehabilitation from his alcohol abuse. Tr. at 123. She provided the following reasons to support her expert opinion in this regard.

First, the DOE psychiatrist testified that two years of abstinence is necessary in this case because the individual met at least two, and possibly three, of the seven criteria for alcohol dependence set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Tr. at 110-113. She further stated that when an alcohol abuser meets partial criteria for alcohol dependence, it is prudent to treat that person as if he is alcohol dependent. She therefore recommended two years of abstinence rather than the shorter period that she usually recommends for those suffering from alcohol abuse. Tr. at 110-115. Specifically, in her report, the DOE psychiatrist found that the individual had experienced "tolerance," *i.e.*, a need for markedly increased amounts of alcohol to achieve intoxication (criterion 1) and a persistent desire or unsuccessful efforts to reduce or control his alcohol usage (criterion 4). DOE Ex. 7 at 12. After witnessing all of the testimony at the hearing, including that of the individual, she found evidence supporting the existence of a third criterion that she said the individual had denied during her evaluation, that the individual had ingested alcohol in larger amounts or over a longer period than was intended (criterion 3). Tr. at 112-114.

The DOE psychiatrist also cited the early age at which the individual began having problems related to alcohol, and the long history of abuse. Tr. at 119, 121. The individual began drinking at 15 or 16 years of age, and was arrested for underage possession of alcohol in 2000, at 17 years of age. DOE Ex. 7 at 8, 9. The DOE psychiatrist concluded that she had not heard anything during the hearing that would convince her to modify her recommendation of two years of abstinence. Tr. at 117. I find the DOE psychiatrist's conclusions to be adequately supported by the record in this proceeding, and I agree that the individual has not demonstrated adequate evidence of rehabilitation or reformation. The DOE's security concerns concerning the individual's alcohol abuse under criteria (h) and (j) remain unresolved.

At the hearing, the individual did not directly address the DOE's criterion (l) concerns regarding his eleven alcohol-related arrests, but instead attempted to mitigate the security concerns under this criterion by demonstrating that he is rehabilitated from alcohol abuse. However, as set forth above, I find that the individual's chances of relapsing into a pattern of excessive alcohol use are unacceptably high at this stage of his recovery. I am further concerned that such a relapse could lead to a recurrence of the alcohol-related legal problems that the individual has previously experienced. Consequently, the DOE's security concerns under criterion (l) also remain unresolved.

V. CONCLUSION

For the reasons set forth above, I find that the individual has failed to adequately address the DOE's security concerns under criteria (h), (j) and (l). I therefore conclude that he has not demonstrated that granting him access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted a security clearance at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: August 14, 2009